

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**A REVIEW OF THE
BOARD OF EQUALIZATION'S TRAVEL CLAIMS**



Kurt R. Sjoberg, Auditor General (acting)

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August 15, 1991

P-026

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

Summary

We reviewed a sample of travel expense claims for all members of the Board of Equalization (board) and found that only one board member, William Bennett, had any significant discrepancies. Similar to the results of a review by the Department of Justice, we identified evidence that contradicted approximately \$3,300 of Mr. Bennett's travel expense reimbursements in our sample. Board members Ernest Dronenburg and Conway Collis also received overpayments. However, these were minor, totaling \$126.50, and both members reimbursed the board for the overpayments. We also found that the board does not always ensure that members' travel expense claims comply with the applicable regulations before paying the claim. Finally, the board can strengthen its controls over payments for members' airline tickets and car rentals.

Background The board consists of five members. Four elected members represent equalization districts. The fifth member, the state controller, is an ex-officio member elected at large.

In fiscal year 1990-91, the board administered 15 tax programs for support of state and local government activities including sales and use taxes, gasoline tax, alcoholic beverage tax, and cigarette tax. In addition, the board adopts rules and regulations for the administration of business taxes programs and for the guidance and direction of the board's property taxes staff, county assessors, boards of supervisors, and local assessment appeals boards in valuing property. The board is also an appellate body for a variety of tax matters within the State.

Before we began our review, the Department of Justice completed an investigation of all travel expense claims submitted by board member William Bennett from January 1, 1988, through March 31, 1990. The Department of Justice took exception to various expenses Mr. Bennett had claimed, concluding that there was enough evidence to refer the case to the Sacramento County district attorney for prosecution. On April 1, 1991, the district attorney charged Mr. Bennett with 23 felony counts of filing false travel expense claims.

Scope and Methodology The purpose of this review was to analyze board members' travel expense claims. We reviewed three consecutive months of travel expense claims submitted by each board member during 1988, 1989, and 1990.¹ We compared the members' travel expense claims with other corroborating evidence such as board minutes, telephone charges, gasoline charges, and airline and rental car receipts. We analyzed the data to determine whether the travel

¹ We did not review any travel expense claims for the state controller, Gray Davis. According to the board and the deputy controller, the state controller has not submitted any travel expense claims for reimbursement.

expense claims differed from the other evidence. If any of the other evidence appeared to contradict a member's claim, we asked the board member to explain the discrepancy and provide additional documentary evidence wherever possible. We did not attempt to determine whether any of the discrepancies were fraudulent. For those questions we did not resolve through our correspondence with the board members regarding their travel expense claims, we are providing the information to the district attorney.

We compared the results of our review of Mr. Bennett's travel expense claims with those of the Department of Justice. The purpose of our comparison was to avoid duplication of effort and to determine if we could rely on the data and conclusions of the Department of Justice. We determined that we could generally rely on the work of the Department of Justice regarding Mr. Bennett's travel expense claims.

In addition, we reviewed board members' travel expense claims for compliance with the applicable rules and regulations. Finally, we reviewed the board's internal controls over the payment of board members' travel expense claims.

**Board
Members'
Travel Expense
Claims**

As elected state officials, board members may receive their actual necessary travel expenses when traveling on state business. However, the Government Code, Section 13920(a), allows the State Board of Control to limit the amount, time, and place of expenses to be paid to elected state officers while they travel on state business. Based on that authority, the State Board of Control issued the California Code of Regulations, Title 2, Section 700 et seq. This section provides the rules and regulations that govern travel expense claims for board members. The purpose of our review was to determine if the members' claims complied with these regulations and to determine whether state resources were used for official state business.

**William
Bennett's
Travel Expense
Claims**

Mr. Bennett submitted ten travel expense claims for the months we reviewed. These claims totaled approximately \$6,300 for 113 days of travel. When we reviewed Mr. Bennett's travel expense claims, we identified other evidence that contradicted his claims. Specifically, we questioned approximately \$3,300 (52 percent) of the expenses claimed on 73 of the days we reviewed. The \$3,300 we questioned includes approximately \$455 in travel expense reimbursements that the Department of Justice did not question.

We found that Mr. Bennett's travel expense claims typically show Mr. Bennett spending the night in various locations throughout the State while attending to board business. Accordingly, his claims included reimbursement for meals, lodging, and incidentals. However, Mr. Bennett's telephone charges, gas receipts, or other evidence we reviewed indicated that Mr. Bennett may not have stayed overnight as shown on his travel expense claims.

For example, on February 5, 1990, Mr. Bennett's travel claim indicates that he left his home in San Rafael at 7:00 a.m. and drove his state car to Sacramento. His claim shows that he stayed in Sacramento from the 5th through the 8th, claiming meals, lodging, and incidentals for the four-day period. Contrary to Mr. Bennett's travel expense claim, telephone records indicate that he returned to the San Francisco area each day rather than staying overnight in Sacramento. Mr. Bennett's car telephone bill shows that two calls were made in the Sacramento area at approximately 2:50 p.m. on February 5th. Then six calls were made or received on his car telephone in the San Francisco area between 4:05 p.m. and 4:28 p.m. that same afternoon.

The following morning on February 6th, Mr. Bennett received two calls on his car telephone while driving in the San Francisco area at 8:10 a.m. and 8:22 a.m. Also, gas receipts indicate that Mr. Bennett filled his state car with gasoline on two separate occasions on the 6th. Both charges were from a gas station in Larkspur, which is near Mr. Bennett's home. According to the minutes of the board meeting in Sacramento on February 6th, Mr. Bennett was in attendance from 2:00 p.m. to 3:30 p.m.

Telephone records show that Mr. Bennett then made two calls from his car telephone at 3:48 p.m. in the Sacramento area. Telephone records also show that Mr. Bennett made a call from his car telephone at 4:37 p.m. in the Santa Rosa area. Finally, telephone records show that Mr. Bennett made or received six calls on his car telephone from 4:42 p.m. through 5:58 p.m. in the San Francisco area.

Based on this evidence, we concluded that Mr. Bennett may not have spent the nights in Sacramento on February 5th and 6th as he indicated on his travel expense claim. If so, Mr. Bennett would not be entitled to reimbursement for lodging, incidentals, and some of the meals he claimed. We found a similar pattern of telephone calls that appear to contradict Mr. Bennett's travel expense claims for February 7th and 8th as well. We questioned a total of \$250 of the \$287 in travel expense reimbursements Mr. Bennett claimed during this four-day period.

We also found evidence that Mr. Bennett may have used state resources for personal business. For example, on December 11, 1989, two airline tickets costing \$114 each that were issued to Jane and Joan Bennett were charged to the board through Mr. Bennett's state credit card. In addition, on April 7, 1990, Mr. Bennett charged a rental car to the board costing \$59 that appears to have been for personal business. Although Mr. Bennett reimbursed the board for these charges on March 8, 1990, and June 4, 1990, the State Constitution, Article 16, Section 6, forbids the use of state credit for private purposes.

We provided Mr. Bennett with a detailed list of the possible exceptions we noted in addition to those included in the district attorney's criminal complaint. We asked Mr. Bennett to answer specific questions about his travel activities and to provide any additional documentary support or explanations he might have. Mr. Bennett's attorney responded to our questions by saying that, in light of the pending legal proceedings, he advised Mr. Bennett that it would be inappropriate to make a point-by-point response to each question. Mr. Bennett's attorney also said he believes

that the Department of Justice's audit has been based on a misinterpretation of the per-diem rules as they apply to constitutional officers such as Mr. Bennett. Specifically, Mr. Bennett's attorney believes that Mr. Bennett and other constitutional officers, like the State's legislators, are entitled to per-diem allowance for days when they are traveling on state business regardless of whether they stay overnight at their travel destination.

Ernest Dronenburg's Travel Expense Claims

Mr. Dronenburg submitted 17 travel expense claims for the months we reviewed. These claims totaled approximately \$9,700 for 105 days of travel. As a result of our review, we asked Mr. Dronenburg about a trip that began on September 25, 1988, and ended on the 30th. Although the trip lasted six days, Mr. Dronenburg's travel expense claim includes reimbursements for seven days of meals. Mr. Dronenburg responded that he and his staff had inadvertently claimed an extra day's allowance for meals totaling \$30, and he amended his travel expense claim for that period, reimbursing the board for the amount overclaimed.

In another instance, we asked Mr. Dronenburg about his travel activities on June 7 and 8, 1989. We noted that his travel claim indicated that he flew to Sacramento on the 7th and returned to San Diego on the 8th. However, board minutes, rental car receipts, and airline tickets indicate that Mr. Dronenburg was in Torrance at board meetings on these two days. Mr. Dronenburg responded that the travel claim was in error and that he was in Torrance at the board meetings as the other evidence indicated. Mr. Dronenburg said that the erroneous claim resulted in an overpayment to him of \$70. Mr. Dronenburg amended his travel expense claim for this period and reimbursed the board for the \$70 overclaimed.

Paul Carpenter's Travel Expense Claims

Mr. Carpenter submitted 12 travel expense claims for the months we reviewed. These claims totaled approximately \$2,100 for 36 days of travel. We found no discrepancies or irregularities with Mr. Carpenter's travel expense claims.

Conway Collis's Travel Expense Claims

Mr. Collis submitted eight travel expense claims for the months we reviewed. These claims totaled approximately \$1,400 for 32 days of travel.

As a result of our review, we asked Mr. Collis about a trip on February 7, 1990. According to Mr. Collis's travel expense claim, he left Sacramento on personal business at 10:30 a.m. However, his travel expense claim includes reimbursement for lunch and dinner on that day. Because Mr. Collis's travel that afternoon was on personal business, Mr. Collis's chief of staff responded that the meals were claimed in error and reimbursed the board for the \$26.50 overclaimed.

**Travel Expense
Claims Do
Not Always
Comply With
Regulations**

The Government Code, Section 13920(a), gives the State Board of Control authority to limit the amount, time, and place of expenses paid to elected state officers including members of the board. Based on that authority, the State Board of Control adopted Title 2, Section 700 et seq., of the California Code of Regulations. These regulations require, among other things, that the claimant's signature be on the travel claim and that receipts support lodging or parking costs exceeding a certain amount. In addition, these regulations establish the circumstances in which board members may claim reimbursement for meal expenses. However, the board does not always adequately review members' travel expense claims to ensure that they comply with these regulations before the board pays the claim.

For example, we reviewed 48 travel expense claims totaling \$19,633 that were submitted by board members. Five of the 48 claims were not signed by the claimants, and one of the 48 claims did not include the receipts required for lodging and parking expenses. An additional 3 of the 48 claims included meal expenses that were not allowable. However, in all cases, the board paid the claims, overpaying board members a total of at least \$106 in travel reimbursements. Although the number of erroneous claims and amounts overpaid are not significant compared with the total claims we reviewed, these weaknesses could lead to additional overpayments to board members.

The supervisor of the board's revolving fund unit stated that she recognized past problems in auditing board members' travel expense claims. According to the supervisor, until recently, the revolving fund unit had been understaffed, and the pressure to remain current with their workload resulted in human error and occasional omissions. The board's revolving fund staff also said that, in the past, they were sometimes pressured by board members' staffs to process board members' claims without all the necessary receipts. The supervisor of the revolving fund unit noted that the demand for "on the spot" payment of expense claims has now ceased.

While this section of the report discusses weaknesses in the board's internal controls over the payment of members' travel expense claims, the improvements we recommend would not necessarily prevent or detect all willfully falsified travel expense claims by board members. A key internal control over the payment of travel expense claims is a supervisor's review and approval of an employee's travel expense claim. Generally, a supervisor would have direct knowledge of an employee's travel activities and could determine if the claim was appropriate. However, board members do not have any supervisors or higher authority to whom they report. Therefore, this type of control cannot be applied to the board members. Further, the cost of having the accounting staff review travel claims thoroughly enough to detect willfully falsified travel expense claims would exceed the potential benefits.

Nevertheless, the board could enact alternative controls to mitigate this weakness. For example, the board's internal audit unit could periodically review randomly selected board members' travel expense claims using a methodology similar to that used by the Office of the Auditor General and the Department of Justice. Another alternative is to select a member of the board or its executive staff to review and approve board members' travel expense claims for payment.

**Weak Controls
Over Payment
for Members'
Airline Tickets
and Car Rentals**

The Financial Integrity and State Manager's Accountability Act of 1983 requires state agency directors to establish effective internal controls to prevent improper disbursements of public funds. In addition, the California Code of Regulations, Title 2, Section 710(a), requires that receipts or vouchers be submitted with the travel claim for each airline ticket and car rental. However, we found that board members do not always submit airline passenger and rental car receipts with their travel claims. Consequently, the board cannot determine if the airline tickets and rental cars that members charge to the board are used for official state business.

Board members can obtain airline tickets or rental cars through a variety of vendors who bill the board directly. When the board receives invoices for airline tickets or rental cars, it tries to match the invoice to a board member's travel claim and the corresponding receipt. The receipt attached to the travel claim allows the board to verify that the invoice is correct and that the trip was for official state business. However, the board members do not always attach the receipts to their travel expense claims in accordance with these requirements. We reviewed 194 airline flights that board members reported on their travel expense claims. Board members did not provide the airline passenger receipts with the travel claims for 13 of these flights. In addition, we reviewed 14 car rentals by board members and found that the members did not provide the rental car receipt with the travel claim in 4 cases. Also, in one case, the board member did not report the rental on the travel expense claim and did not attach the receipt.

When a board member does not attach a receipt to the travel claim, the board's accounting staff contacts the board member and requests the receipt. If the board member provides the receipt in question, the board can determine whether the ticket or rental car was actually used and determine if the amount invoiced is correct. However, the board cannot always match the receipt to the corresponding travel expense claim for two reasons. First, board members are not required to report on their travel expense claims each airline ticket or rental car they charge to the board. Second, board members frequently use airline tickets at times or dates other than those stated on the ticket and do not note the change on the airline passenger receipt. As a result, neither we nor the board could match each airline ticket to a corresponding travel expense claim. Therefore, we could not verify that the trip was for official state business.

In addition, we could not determine how often board members charged airline tickets or rental cars to the board that they did not report on their travel expense claims. However, as discussed earlier, we did identify at least two instances when board member William Bennett charged airline tickets and a rental car to the board and did not report the activity on his travel expense claims. In both instances, Mr. Bennett appears to have used the airline tickets and rental car for personal business.

Recommendations

The board's accounting staff should review all members' travel expense claims for compliance with the applicable rules and regulations before payment and refuse payment on any claim that does not comply. In addition, because the board does not have a supervisory review of its board members' travel expense claims, it should consider establishing an alternative type of review.

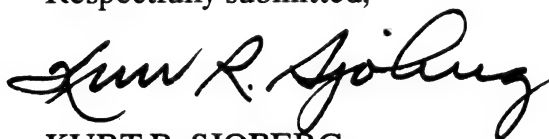
To improve the board's controls over paying for board members' use of airline tickets and rental cars, board members should report on their travel expense claims all airline tickets and car rentals charged to the board. Board members should also attach all airline passenger and car rental receipts to the corresponding travel expense claims. Furthermore, the board's

accounting staff should reconcile all board members' invoices for airline tickets and car rentals with the corresponding travel expense claims before paying the invoices.

Finally, the board should attempt to recover all travel expenses found to be paid improperly to board members.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this letter report.

Respectfully submitted,



KURT R. SJOBERG
Auditor General (acting)

Staff: Samuel D. Cochran, Audit Manager
Fred Forrer, CPA
Kim Reed
Cindy Sanford
Greg Stimson

**Responses
to the Audit**

Board of Equalization

Board of Equalization, Members
Legal Counsel for William M. Bennett
Office of the Auditor General's Comments
Ernest J. Dronenburg, Jr.
Other Responses*

*We provided Paul Carpenter and Conway Collis an opportunity to respond. However, neither chose to do so.



STATE BOARD OF EQUALIZATION

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Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

August 1, 1991

Mr. Kurt R. Sjoberg
Auditor General (Acting)
660 J Street, Suite 300
Sacramento, California 95814

Dear Mr. Sjoberg:

Brad Sherman, Chairman, State Board of Equalization, has requested that I, as Executive Director, respond to the recommendations of your report on Board of Equalization Travel Claims. The recommendations primarily relate to the operation and procedures of our travel review section.

It is our understanding that our Board Members, some of whom you comment on in the report, have been given individual opportunity to respond to the sections of the report which refer specifically to them. The Board Members all have had opportunity to review the entire report and also may provide individual comments by your 5:00 p.m., August 5 deadline.

Your report summary commented that "the board does not always ensure that the members' travel expense claims comply with applicable regulations before paying the claim", and that "the board can strengthen its controls over payments for members' airline tickets and car rentals." Although I will respond to your specific recommendations later in this memorandum, I would like to note for the record that the Board's travel claim function is a part of the Board's revolving fund unit which has an extremely low error rate. Of the more than 24,000 claims processed annually, less than 20 claims per year are returned or corrected by the State Controller's Office. Nevertheless, of course, we will take all necessary actions to implement the various recommendations included in your report.

Mr. Kurt R. Sjoberg

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August 1, 1991

Your report on page 8 acknowledges that a key internal control over expense and travel claims is supervisory review which, of course, is not possible in regard to Board Member claims or, for that matter, those of any other constitutional officers. Also on page 9 of your report you suggest the board could enact alternative controls to mitigate this concern. Of the alternatives you suggest I shall recommend to the Board that our internal audit unit randomly review Board Members' expense claims periodically using a methodology similar to that which you used in your audit.

Your report concludes with three other recommendations which I will instruct our Fiscal Division to implement to the extent that they have not already done so. For example, as you recommend our staff already is reviewing and refusing to pay any claims that don't have all appropriate signatures and necessary receipts.

Thank you for the opportunity to respond to your report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Rambo".

Cindy Rambo
Executive Director

CR:fr

MORRISON & FOERSTER

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August 7, 1991

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Kurt R. Sjoberg
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Dear Mr. Sjoberg:

Thank you for forwarding the draft of your Office's report relating to the audit of William M. Bennett's travel expenses and your legal counsel's opinion. We are particularly concerned about the fairness of your report given the certainty that it will be publicized and any negative language will unfairly reflect on Mr. Bennett and be likely to have an adverse and inappropriate effect on the criminal proceedings. We therefore appreciate very much the openness with which you have approached this matter and the opportunities you are giving us to point out to you, as we do below, the true facts as we understand them to be. We have the following comments:

Your Office's draft report refers to my "belief" that Mr. Bennett "and other constitutional officers, like the State's legislators, are entitled to per diem allowance for days when they are traveling on state business regardless of whether they stay overnight at their travel destination." While accurately summarizing our position, the draft report (or at least the portion that we have seen) does not discuss the bases for our conclusion regarding the per diem allowance or any of the applicable statutes, rules and regulations as set forth in the enclosures to my July 22, 1991 letter. Nor does the draft report include any citations to the specific regulations upon which your Office is relying in its audit. In particular, the report does not cite any specific Board of Control regulation which embodies the "overnight" requirement which the Department of Justice applied in its audit -- and your Office has apparently accepted.

①*

*The Office of the Auditor General's comments on this response begin on page 20.

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In fact there is no such requirement in the regulations. Neither the Department of Justice nor your Office has been able to cite to any Board of Control regulation which sets forth such a requirement. The fact that there is no such requirement in the Board of Control regulations is confirmed by the fact, acknowledged in your draft report (page 6, lines 3 through 8), that legislators receive a full per diem allowance when travelling regardless of whether they stay "overnight" at their destination. The legislators' per diem allowances, like elected Constitutional Officers' such as Mr. Bennett, are set by the Board of Control. Obviously, if the Board of Control-prescribed per diem allowances were subject to some unwritten "overnight" requirement, that requirement would apply to elected officials and legislators alike. As the following analysis of the statutes and regulations demonstrates, there simply is no such requirement.

②

I note at the outset that the legal opinions that your Office has provided us, wholly support the position we have stated. Those opinions acknowledge that as an elected Constitutional officer, Mr. Bennett is exempt from the regulations promulgated by the Department of Personnel Administration. See, Government Code § 19820. The Department of Personnel Administration's regulations are the source of the "overnight" requirement and the rules for partial "per diem" allowances which apply to the travel claims of State employees. It has been apparent to us for some time that the Department of Justice' audit has been based upon an improper application of these Department of Personnel Administration regulations to Mr. Bennett's travel claims. As an elected State official, he simply is not subject to these rules.1/

The legal opinions that you have provided us conclude that, as an elected official, Mr. Bennett's per

1/ For instance, we understand that the Department of Justice has allowed partial per diem allowances consisting of the lunch allowance and allowances for breakfast (if Mr. Bennett's departure time preceded 7:00 a.m.) and dinner (if he returned home after 7:00 p.m.) on dates where the auditor acknowledges he traveled, but contends he did not stay overnight. The Department of Justice' auditor has applied requirements from the DPA regulations which simply do not apply to elected State officials. See, e.g. § 599.619(a)(3).

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diem allowances are governed by the Board of Control's regulations. We agree that the only regulation arguably applicable to Mr. Bennett are these promulgated by the Board of Control. The critical question, which the opinions that you have provided simply do not address, is whether, where and how the Board of Control's regulations prescribe an "overnight" requirement (or the types of departure and arrival time requirements for meal allowances) that the Department of Justice and your Office have apparently applied in your audits. In fact, the Board of Control's regulations embody no such requirements. To the contrary, the Board of Control's regulations which govern the per diem allowances of legislators and elected officials are silent as to any overnight requirement and provide no formula for computing partial per diem allowances. The silence of the Board of Control's regulations is explained by the fact that they govern both elected officials and legislators. ①

Your draft report and legal opinions correctly note that under Government Code § 13920(a) the Board of Control is empowered to adopt regulations governing travel allowances for elected officials. Those materials ignore the fact, however, that the Board of Control also is charged with setting the per diem allowances for legislators. Government Code § 8902 provides that legislators shall receive reimbursement for travel and living expenses at a rate established by the State Board of Control" Id. Prior to its amendment in 1987, Section 8902 provided that legislators were to be compensated for travel expenses and receive per diem "at the same rate as may be established by the State Board of Control for other elected state officers." (See, former § 8902 attached hereto as Exhibit A). * Plainly, the Board of Control regulations apply to the per diem allowances of both elected officials and legislators.^{2/}

Consistent with Government Code §§ 8902 and 13920(a), the Board of Control has prescribed per diem

^{2/} "[W]here a statute provides for reimbursement of expenses incurred in connection with official duties, such reimbursement will be governed by the pertinent Board of Control regulations unless the statute provides otherwise." 63 Ops. Cal. Atty. Gen. 769, 799 (1980). Here, far from "providing otherwise," Government Code § 8902 explicitly states that the Board of Control will establish the per diem allowances to which legislators are entitled.

*Exhibits A through E are available for review at the Office of the Auditor General.

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allowances for both legislators and elected state officials in virtually identical format. (See Exhibits B & C). While the Board of Control has historically broken the per diem allowance down into meal and lodging components, neither the notices nor the regulations themselves state that traveling elected officials must actually incur breakfast, lunch, dinner and lodging expenses, in order to be entitled to the allowance.^{3/} As is customary with per diems, the Board of Control-set allowances provide a flat rate payment instead of dollar for dollar reimbursement of actual expenses. Compare, 5 USC § 5701 (4). (Exhibit D). This flat per diem allowance is in recognition of living expenses "deemed" to have been incurred by those elected State officials who are subject to these regulation. See, 1977 Cal. Stats. Chapter 1079 § 152. (Exhibit E). This is why legislators are entitled to full per diem allowance (including lodging) regardless of whether or not they stay overnight. See, 64 Ops. Cal. Atty. Gen. 33 (1981). ③

Neither your Office nor the Department of Justice has explained how it is, in light of the foregoing, that the Board of Control's regulations somehow condition the per diem allowance of elected Constitutional officers upon an "overnight" requirement from which legislators are admittedly exempt. Nor have you cited any statutes, regulations or written Board of Control opinions that explain or document this supposed dichotomy.

The correspondence between your Office and the Board of Control which you have provided nowhere addresses this issue. That correspondence simply cites the broad language of Government Code § 13920(a) and § 700 of the Board of Control's regulations, stating that the general purpose of the regulations is to provide "reimbursement for the necessary out-of-pocket expenses incurred by state officers and employees because of travel on official state business." It would appear to us that your office and the Department of Justice are relying upon nothing more than this general language to impose an "overnight" requirement for per diem allowances for elected officials even though the regulations themselves state no such requirement. This sort of general language simply does not impose an ①

^{3/} To the contrary, § 701(a)(4) of the Board of Control regulations prescribes that the per diem allowance may be claimed by state officials who are on travel status for less than a full day.

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"overnight" requirement.^{4/} We also call your attention to the fact that Government Code § 8902, authorizing per diem allowances for legislators, states that the Board of Control allowance shall provide for "reimbursement of [legislators'] living expenses." See also, California Constitution Article IV, § 4. If general statutory references to "reimbursement" was intended to condition per diem allowances upon the actual incurring of lodging expenses, the legislators' allowance obviously would be subject to the same overnight requirement that the auditors are selectively applying to Mr. Bennett.

In summary, let me put it in its clearest possible focus. If you read together, as you should, 701(a)(4) and 706(c)(1) its as clear as it can be that a person in Mr. Bennett's position can claim subsistence expenses where the departure time or the return time exceeds the regularly scheduled work day by one hour since the regulations allow the per diem allowance in any twenty-four hour period or fractional part thereof. Thus, the most logical interpretation of your Board of Controls Regulations indicate Mr. Bennett's right to per diem, regardless of whether he stays overnight. ①

In light of the foregoing, we urge you to reevaluate the misinterpretation of governing rules upon which the Department of Justice's audit has been based. If you disagree with our analysis, we would request an opportunity to discuss your views with you or your counsel. Similarly, if your office is proceeding upon the basis of a regulation, a legal opinion, or Board of Control advice to which we are not privy, we would request an opportunity to review such matters and respond. ④

I again urge, for the reasons stated in my letter of July 22, 1991, that you withhold publication of your report pending the conclusion of the current legal proceedings against Mr. Bennett. If you cannot withhold publication, at a minimum we believe that your report should set forth in detail our comments and analysis of the governing statutes and regulations. If your Office does not agree with that analysis, we believe your report should at least acknowledge that the rules that the Department of Justice has applied to Mr. Bennett's per diem claims are not

^{4/} Compare, § 599.619(a)(3) of the D.P.A. Regulations which includes an explicit "overnight" requirement.

MORRISON & FOERSTER

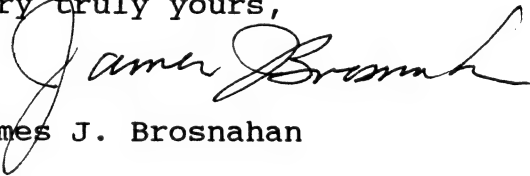
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clearly stated in the regulations and were never communicated to him. We are advised that the Board of Control has acknowledged both of these circumstances to your Office. We think your report should reflect this as well. (5)

In addition to the foregoing general comments, we have specific comments upon the two airline tickets and one car rental charge mentioned in your draft report. As the report acknowledges, Mr. Bennett promptly reimbursed the state for the relatively small amounts involved in these two charges. Under the circumstances, Mr. Bennett made no gift or private use of public monies or credit and the reference in your report to Article XVI, § 6 is entirely inappropriate. We believe that these items should be dropped. If you include reference to these matters in your report, we note as an editorial matter, that the fact of reimbursement should be noted at page 10 (where you again refer to these two items) in order to avoid any misunderstanding by the reader or quotation out of context. (6) (7)

Thank you for providing me an opportunity to review and comment upon your draft report. I am available to discuss the report and our comments with you and your staff or counsel.

Very truly yours,



James J. Brosnahan

enclosures

cc: Sam Cochran, Audit Manager

**Comments The Office of the Auditor General's Comments
on the Response From
the Legal Counsel for William M. Bennett**

- ① We did not use an “overnight requirement” to evaluate Mr. Bennett’s travel expense claims. The Board of Control’s rules governing board members’ travel expense claims are contained in the California Code of Regulations, Title 2, Section 700 et. seq. Section 701(a)(4) states that employees on travel status for less than 24 hours may claim subsistence expenses incurred before or after the regularly scheduled work day. In addition, Section 701(c) states that travel expenses include per-diem expenses and business expenses. Section 701(c)(1) defines per-diem expenses as those charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status. Finally, Mr. Bennett signed his travel expense claims certifying that the claims were a true statement of travel expenses incurred while in the service of the State of California and that all items shown were for official business of the State of California. Therefore, we evaluated Mr. Bennett’s travel expense claims on the basis of whether he could have actually incurred the travel expenses he claimed. In those cases in which Mr. Bennett claimed lodging for nights when it appears he actually returned home, we question whether Mr. Bennett incurred the expenses he claimed. If Mr. Bennett returned to his home, it seems unlikely that he would have also incurred expenses for lodging.
- ② As shown on page 6, this statement was made by Mr. Bennett’s counsel, not by the Office of the Auditor General.

- ③ Contrary to the assertion of Mr. Bennett's counsel, the regulations do require board members to incur the expenses to be entitled to the allowance. See our comments in Footnote ① .
- ④ We telephoned Mr. Bennett's counsel and informed him that we did not revise our report in response to his comments. We further informed him that we have not withheld any information from him regarding this issue.
- ⑤ We believe that the rules governing the travel expense claims of members of the Board of Equalization clearly state that the expenses claimed must actually be incurred. Further, we do not discuss in our report, nor did we discuss with the Board of Control, whether the regulations were ever communicated to board members. Mr. Bennett's counsel incorrectly asserts that the Board of Control "acknowledged both of these circumstances" to our office.
- ⑥ As we state in the report on page 5, the State Constitution, Article 16, Section 6, forbids the use of state credit for private purposes. The Constitution makes no exceptions for the relatively small amounts or prompt reimbursements of state funds.
- ⑦ We made no changes to the report because we have already disclosed the reimbursements in an earlier section.

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ERNEST J. DRONENBURG, JR.
MEMBER, STATE BOARD OF EQUALIZATION

July 29, 1991

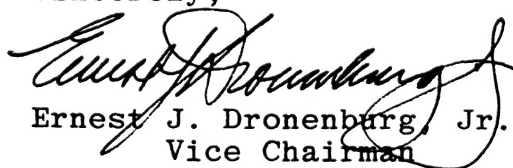
Mr. Kurt R. Sjoberg
Auditor General (acting)
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

ATTENTION: Sam Cochran

Dear Mr. Sjoberg:

I have reviewed your draft letter P-026 per your correspondence of July 29 and feel it presents fairly a comprehensive audit of my travel expense claims for the years in question.

Sincerely,


Ernest J. Dronenburg, Jr.
Vice Chairman

EJD/ldb

**cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps**